

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 03-12219-DPW

FAIRBANKS CAPITAL CORP. and  
FAIRBANKS CAPITAL HOLDING CORP.,

Defendants.

ALANNA L. CURRY, *et al.*, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

Civil Action No. 03-10895-DPW

FAIRBANKS CAPITAL CORP.,

Defendant.

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND SETTLEMENT HEARING**

TO: CERTAIN PERSONS WHOSE MORTGAGE LOANS WERE SERVICED BY FAIRBANKS CAPITAL CORP.

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY!**

Usted puede ser elegible para recibir una compensación.  
Para obtener información en español, llame sin cargo al 877-377-1287.

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**1. WHY SHOULD I READ THIS NOTICE?**

This Notice has been mailed to you because Fairbanks' records show that you had a home mortgage loan that was serviced by Fairbanks between January 1, 1999 and December 10, 2003 (the "class period"), and that you fall within the proposed class of consumers in this case. The proposed class of consumers is further discussed in Section 3 of this Notice. Therefore, you (and any co-borrowers on your loans) may be eligible to receive money from a proposed settlement (the "Settlement") of a Federal Trade Commission (the "FTC") lawsuit and class action lawsuit filed against Fairbanks. Please share this Notice with any co-borrowers on your loans.

This Notice describes the FTC and private lawsuits against Fairbanks, your rights under the proposed Settlement, and the date and time of a public Fairness Hearing that will be held by the United States District Court in Boston to consider the fairness of the proposed Settlement. Although the Fairness Hearing will be held in a Massachusetts court, the proposed Settlement covers persons nationwide.

## **2. WHAT ARE THESE LAWSUITS ABOUT?**

These lawsuits concern Fairbanks' conduct in handling mortgage loans, a process known as servicing the loan. The major focus of these lawsuits involves how Fairbanks serviced loans that were in default or that it treated as being in default. If borrowers do not make their mortgage payments on time, or otherwise do not perform their duties under the loan, the mortgage company frequently takes various actions in response, such as imposing late fees and other charges, obtaining insurance on the property securing the mortgage, and foreclosing on the property itself. The lawsuits generally allege that Fairbanks assessed late fees and other charges even though borrowers' monthly payments were not late; charged fees that were not authorized; obtained property insurance at the borrower's expense when the borrower already had insurance in place; engaged in improper collection practices; and took actions to foreclose on borrowers' properties when not warranted by law or contract.

The lawsuits also involve allegedly improper "prepayment penalties." These are fees provided for in the borrower's mortgage or note that a lender can impose when a borrower pays off his or her loan (usually because of a refinancing) before a specified period of time has elapsed. Some state laws restrict when and how a lender may impose prepayment penalties on borrowers. The lawsuits allege that Fairbanks violated those state laws or the mortgage terms in certain circumstances. The lawsuits also concern certain other alleged misconduct by Fairbanks.

The lawsuits were filed by the FTC and various individual borrowers, including representative borrowers suing on behalf of statewide or nationwide classes (the "Plaintiffs"). The lawsuits seek money damages and other relief from Fairbanks and certain companies that Plaintiffs believe have responsibility for Fairbanks' conduct.

There are now two main cases. First, on November 12, 2003, the United States, acting on authority of the FTC and the Department of Housing and Urban Development, filed a complaint ("FTC Complaint" or "FTC Case") against Fairbanks and an affiliate. The FTC Complaint charges that Fairbanks' loan servicing practices violated Section 5 of the Federal Trade Commission Act, the Fair Debt Collection Practices Act and other laws.

Second, at about the same time, the Plaintiffs filed a Consolidated Class Action Complaint in the Curry case ("National Class Case"). The National Class Case alleges that Fairbanks violated the Fair Debt Collection Practices Act and engaged in other wrongdoing in loan servicing. The National Class Case includes various claims previously made in a number of other class action lawsuits filed in various courts.

Fairbanks has agreed to settle both the National Class Case and the FTC Case, on certain terms that are summarized in this Notice. On November 12 and 14, 2003, the FTC and Plaintiffs submitted to the Court separate but related proposed settlements. The complete details of the proposed settlement of the National Class Case are contained in a "Settlement Agreement and Release" (the "Settlement Agreement"), on file in the National Class Case. The complete details of the proposed settlement of the FTC Case are contained in a "Stipulated Order" (the "FTC Order") that the Court has preliminarily approved and which is on file in the FTC Case. The proposed Settlement of the National Class Case must be finally approved by the Court, and, subject to the terms of the Settlement Agreement and the FTC Order, the proposed Settlement will become effective only if the settlement of the National Class Case and the FTC Case are both finally approved by the Court.

The Court has preliminarily approved the Settlement as fair, reasonable and adequate. At the Fairness Hearing on May 12, 2004, the Court will consider whether the Settlement should be finally approved.

## **3. WHO IS COVERED BY THE PROPOSED SETTLEMENT?**

According to Fairbanks' records, you are a member of the Class and you are covered by the Settlement. The Class includes all persons whose loans were serviced by Fairbanks during the class period that meet any one or more of these criteria: (a) the borrowers' loans were in default or Fairbanks treated their loans as in default, and the borrowers were charged late fees and/or default-related fees or were affected by default-related conduct; (b) Fairbanks imposed a prepayment penalty in violation of law or contract; or (c) Fairbanks took other actions affecting the borrowers' loans, such as mailing in tax payments late but charging borrowers a penalty, all as listed in the Consolidated Class Action Complaint. The actual class definition may be found in the Complaint and Settlement Agreement in the National Class Case.

## **4. WHAT ARE THE TERMS OF THE PROPOSED SETTLEMENT?**

The following is only a summary of the terms and conditions of the proposed Settlement. For more information, you may obtain a copy of the Settlement Agreement and/or the FTC Order by writing to the Claims Administration Center, whose name and address is listed in Section 6 of this Notice.

The Settlement involves three forms of relief:

A. There will be a \$40 million redress fund for the benefit of certain members of the Class (the "Redress Fund"). The FTC will be in charge of administering the Redress Fund. Under the Settlement Agreement and the Stipulated Order, the Redress Fund will be distributed among Fairbanks borrowers (1) whose loans were in default (or treated incorrectly by Fairbanks as if in default) and the borrowers were charged late fees and/or default-related fees or were affected by

default-related conduct, or (2) who paid a prepayment penalty in violation of law or contract. Section 5 of this Notice describes details of how the Fund is to be distributed.

B. Fairbanks will provide automatic loan credits or make refunds in order to reverse certain charges on loan accounts (the "Reverse or Reimburse Program"). The charges that will be reversed are: charges for forced placed hazard insurance where the borrower already had insurance on the home (together with resulting late charges and default-related fees); charges for penalties (or excess interest) on property taxes where Fairbanks made a late payment from escrowed funds (together with resulting late charges and default related fees); charges for inspections and appraisals that were not completed; and certain interest charges that were wrongly calculated. It is estimated that the value of these payments and account credits will be approximately \$7 million.

C. Fairbanks will implement a number of significant changes in how it operates, and Fairbanks has agreed to expand and improve its programs for resolving disputes and for assisting borrowers with plans to resolve loan delinquencies in order to avoid foreclosure. The FTC and Plaintiffs believe that these changes will improve Fairbanks' business practices and provide significant benefits and protections for consumers whose loans are serviced by Fairbanks.

The proposed Settlement will only become effective if approved by the Court. If the proposed Settlement is approved, the Court will enter a judgment that releases and discharges Fairbanks and certain other persons from certain claims which were or could have been asserted against them. The release is further discussed in Section 12 of the Notice.

## **5. HOW WILL THE SETTLEMENT FUNDS BE DISTRIBUTED?**

**A. Redress Fund.** The Redress Fund will be distributed to Class Members who make timely, valid claims and do not timely exclude themselves from the Settlement. The formula for distribution will be determined by the FTC. In summary, the Redress Fund will be divided into two components.

(1) One component, which is estimated to involve \$35 million, will be paid out as follows: If you are a Class Member whose loan was ever in default (or Fairbanks treated it that way), you will be eligible to receive money from the Redress Fund in proportion to the amount of money in late fees and other default-related fees that you paid or were assessed to your loan account or other harm that you suffered from Fairbanks' default-related conduct. These fees will not include fees that will be separately reimbursed through the Reverse or Reimburse Program (see below).

The amount of money you receive from this part of the Redress Fund will depend on the amount of late fees and other default-related fees you paid or was charged to you, or other harm, less any refunds, and on the number of consumers who participate in the Redress Fund. Every Class Member who was harmed and that files a timely, valid claim will receive at least some distribution from the Redress Fund. The FTC expects that the total amount paid or charged Class Members who choose to participate in the Redress Fund, plus the amount of harm alleged as a result of wrongful foreclosures, will exceed the amount in the Redress Fund. In that case, Class Members will be paid on a pro rata basis; that is, the money you receive will be equal to only a portion of your loss. For example, if the charges paid or assessed for all consumers who participate in the Redress Fund (and do not make a claim for wrongful foreclosure) totals twice the size of the Redress Fund, a borrower who paid \$200 in fees would expect to receive a redress payment of only \$100, or 50% of the full amount. (This is only an example; the amount you receive from the Redress Fund could be greater or smaller).

In addition, if you are a Class Member who paid an improper prepayment penalty, you will be eligible to receive a refund of a portion of any amount of the prepayment penalty that was in violation of law or contract from this redress fund. If your claim for an improper prepayment penalty is accepted, the amount you will receive will depend on the number of valid claims submitted, but it will be at least \$200 (or the amount that you paid for your prepayment penalty, if it is less than \$200).

(2) The second component, which is estimated to involve \$5 million, will be distributed to persons whom it is determined have lost their homes to foreclosure as a result of improper loan servicing conduct by Fairbanks. Class members who have lost their homes to foreclosure may make a claim against both portions of the Redress Fund.

**In order to receive any money from the Redress Fund, you may not exclude yourself from the Settlement and you will need to submit a claim form and execute a release as enclosed in this mailing. You may have received more than one claim form depending on your circumstances. If so, you should complete and submit each form for which you want to make a claim. Further details on how to make a claim are in Section 6 of this Notice.** Joint borrowers, such as a husband and wife, will receive only a single redress payment per loan. Borrowers who had more than one loan will be eligible for a redress payment for each loan.

Ultimately, class members who make timely, valid claims will receive their money by check. The check will come from the Redress Fund and not Fairbanks directly.

**B. Reverse or Reimburse.** If the Settlement is approved, Fairbanks has agreed to reimburse certain charges in full (if previously paid) or to reverse such charges (to the extent they remain pending on consumers' accounts without payment). Reimbursement, where applicable, will be in cash, regardless of whether the loan is still serviced by Fairbanks. The "Reverse or Reimburse" Program applies to: 1) hazard insurance charges imposed by Fairbanks when the borrower

had an existing policy of hazard insurance. "Follow on" charges, such as late payment fees and other delinquency-related fees that resulted from the improper insurance charges will also be "reversed or reimbursed"; 2) tax penalties and/or interest and follow on charges resulting from Fairbanks' failure to make timely tax payments from escrowed funds; 3) property appraisal and inspection fees for brokers price opinions and inspections that were not completed due to reinstatement or payoff; 4) excess interest collected at payoff and not previously refunded; and 5) excess interest collected due to rounding errors. **The benefits of the Program will not be given to persons who choose to exclude themselves from the Settlement.**

If you are eligible for these benefits, and if the Settlement is approved, you will receive separate correspondence or notice of the benefit from Fairbanks. In connection with items no. 1 and no. 2 listed above, Fairbanks may have information sufficient to determine that you were charged improperly and will therefore reverse or reimburse such improper charges without further action by you. If necessary information is not available to Fairbanks, Fairbanks will allow you an opportunity to submit additional information about your property insurance coverage or real estate tax penalties during the relevant period. If you do so, the appropriate amount will be reimbursed. **There is no claim form for this process.**

**C. Practice Changes.** If the Settlement is approved, the practice changes will be put into effect by Fairbanks and will apply to all borrowers whose loans are serviced by Fairbanks.

## **6. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?**

If you want to apply for a share of the Redress Fund, you need to complete the Claim Form(s) attached to this notice and mail it (or them) to the Claims Administration Center, Gilardi & Co., P.O. Box 808054, Petaluma, CA 94975-8054. **All Claim Forms must be postmarked by April 24, 2004; if you submit a Claim Form that is postmarked after April 24, 2004, it will be denied but you will still be bound by the Settlement.**

If you believe you are eligible to participate in the Redress Fund and you did not receive a claim form and wish to make a claim, contact the Claims Administration Center by writing to them at Gilardi & Co., P.O. Box 808011, Petaluma, CA 94975-8011, and they will provide you a claim form to submit. As noted above, there is no claim form for the Reverse and Reimburse Program.

If you do not submit a claim form (and the Settlement is approved), you will still benefit from the changes in Fairbanks' future practices. You will also benefit automatically if your loan falls within the Reverse or Reimburse Program described in Section 5 of this Notice.

If you change your address, please notify the Claims Administration Center by writing to them at Gilardi & Co., P.O. Box 808011, Petaluma, CA 94975-8011.

**NOTE: YOUR OBLIGATION TO MAKE PAYMENTS ON YOUR CURRENT LOAN IS NOT AFFECTED BY THIS SETTLEMENT.**

## **7. CAN I EXCLUDE MYSELF FROM THE SETTLEMENT?**

Yes. If you exclude yourself from the Class, you will **not** receive any payment from the Redress Fund, you will **not** receive anything through the Reverse or Reimburse Program, and you will **not** be bound by the Final Order and Judgment which may be entered in these cases. You will be free to pursue whatever legal rights you may have by pursuing your own lawsuit arising out of Fairbanks' practices at your own risk and expense.

To exclude yourself from the Class, you must send a Request for Exclusion by first-class mail, postage prepaid, to the Claims Administration Center, Gilardi & Co., P.O. Box 808011, Petaluma, CA 94975-8011. Your Request for Exclusion must be in writing and postmarked by April 9, 2004. The Request for Exclusion must include: (a) your name, address, telephone number and the last four digits of your social security number; (b) your Fairbanks loan number(s); (c) a statement that you and all other borrowers named on your promissory note are seeking exclusion; and (d) your signature and the signature of all other borrowers named on the promissory note. If you are acting on behalf of another person or entity, your Request for Exclusion also needs to include documentation (such as a power of attorney) sufficient to show your authority to act on behalf of that person or entity. If the Request for Exclusion is not timely submitted, you will be included in the Class and you will be eligible to receive settlement benefits. You also will be legally bound by the proposed Settlement (if it is approved), including the provisions releasing Fairbanks and certain parties, as more fully described in the Settlement Agreement.

## **8. WHY, WHEN AND WHERE WILL THE FAIRNESS HEARING BE HELD?**

A hearing on whether to grant final approval of the Settlement will be held before the Honorable Douglas P. Woodlock of the United States District Court for the District of Massachusetts, on May 12, 2004 at 2:30 P.M. in Courtroom One, John Joseph Moakley Courthouse, One Courthouse Way, Boston, Massachusetts (the "Fairness Hearing"). There is no need for you to attend the Fairness Hearing if you simply wish to benefit from the proposed Settlement. The purpose of the Fairness Hearing shall be to determine, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable and adequate, (b) whether the National Class Case should be certified as a class action and the individual representative plaintiffs in the National Class Case (the "Named Plaintiffs") are adequate representatives of the Class, (c) whether Plaintiffs' Counsel are

entitled to attorneys' fees and, if so, how much, and (d) whether the Final Order and Judgment should be entered dismissing the National Class Case with prejudice and on the merits against the Plaintiffs and all Class Members of the Class (except for those persons who timely and properly request to be excluded from the settlement).

The Court has the power to adjourn or reschedule the Fairness Hearing from time to time without further notice of any kind.

At the hearing, the Court will consider the statements of the parties and the FTC, and any objections that have been made. Any Class Member who has not filed a timely written Request for Exclusion has the right to object to the proposed Settlement. If you want to object, you must file a written objection with the Court not later than April 9, 2004 with the Civil Clerk's Office, United States District Court for the District of Massachusetts, John Joseph Moakley Courthouse, One Courthouse Way, Boston, MA 02210. All persons wishing to object must also send a copy of their written objection to Plaintiffs' Co-Lead Counsel, Defendants' Counsel, and FTC Counsel (listed below). The objection must contain your name, address and telephone number; a statement that you object; a specific statement explaining why you object to the Settlement; and copies of all documents you wish the Court to consider.

Any Class Member or his/her attorney intending to appear at the Fairness Hearing must (i) file a notice of appearance with the Clerk of Court no later than April 9, 2004, and (ii) serve same on Plaintiffs' Co-Lead Counsel, Defendants' Counsel, and FTC Counsel. Any subjects to be raised at the Hearing must also be contained in a written objection that has been filed with the Court.

More than twenty-five law firms and organizations are counsel in the National Class Case, as set forth in First Amended and Consolidated Complaint filed with the Court. The pertinent addresses for those lawyers who need to receive copies from you of anything you file in court are as follows:

(i) Plaintiffs' Co-Lead Counsel:

Gary Klein, Esq.  
John Roddy, Esq.  
Grant & Roddy  
44 School Street, Suite 400  
Boston, MA 02108

Kelly M. Dermody, Esq.  
Lieff, Cabraser, Heimann &  
Bernstein, LLP  
275 Battery Street, 30th Floor  
San Francisco, CA 94111

Niall P. McCarthy, Esq.  
Cotchett, Pitre, Simon & McCarthy LLP  
San Francisco Airport Office Center  
840 Malcolm Road, Suite 200  
San Francisco, CA 94010

Daniel Mulligan, Esq.  
Jenkins & Mulligan  
660 Market Street, 3rd Floor  
San Francisco, CA 94104

(ii) Defendant's Counsel:

Thomas M. Hefferon, Esq.  
Goodwin Procter LLP  
Suite 500  
1717 Pennsylvania Avenue, N.W.  
Washington, DC 20006

(iii) FTC Counsel:

Lucy E. Morris, Esq.  
Division of Financial Practices  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Mail Drop NJ-3158  
Washington, DC 20580

Any Class Member who does not comply with these requirements shall be deemed to have waived such objection and shall be forever foreclosed from making any objection to the proposed Settlement.

## **9. WHO REPRESENTS THE PLAINTIFFS?**

The Class is represented by Co-Lead Counsel and a number of other attorneys. The FTC is a federal law enforcement agency acting in the public interest.

## **10. WHAT ARE COUNSELS' REASONS FOR SETTLEMENT?**

The FTC and Plaintiffs' Counsel have agreed to the Settlement after considering, among other things, (i) the substantial benefits available to the Class under the terms of the FTC Order and the Settlement Agreement; (ii) the attendant risks and uncertainty of litigation, especially in complex litigation such as this, as well as the difficulties and delays inherent in such litigation; and (iii) the desirability of consummating the Settlement promptly to provide effective relief to the Class. The FTC and Plaintiffs' Counsel also believe that the practice changes in the Settlement should provide substantial ongoing benefits to consumers.

The Court has not ruled on the merits of the claims or defenses in this case, and Fairbanks has denied and continues to deny each and all of the claims and contentions alleged by the FTC and by Plaintiffs. Fairbanks has denied and continues to deny all charges of wrongdoing or liability against it arising out of or relating to any of the conduct, statements, acts or omissions alleged, or that could have been alleged. Nonetheless, Fairbanks has concluded that further litigation would be protracted and expensive and would not be in the best interest of Fairbanks, and that it is

desirable that the FTC Case and the National Class Case be fully and finally settled in the manner and upon the terms and conditions set forth in the FTC Order and the Settlement Agreement.

#### **11. WILL PLAINTIFFS' COUNSEL OR OTHER BORROWERS RECEIVE COMPENSATION?**

Plaintiffs' Counsel will make an application to the Court for approval of an award of attorneys' fees and expenses in the National Class Case. The fees and expenses will be no more than \$8.25 million, plus reimbursement of certain expenses estimated to be approximately \$135,000 - \$150,000. Counsel fees and expenses will be shared among many law firms that had pursued class action cases against Fairbanks. Reasonable incentive awards may be paid to the Named Plaintiffs, in an amount not to exceed \$3,500 each. The attorneys' fees and expenses, and incentive awards, will be paid by Fairbanks separately and not from the Redress Fund. **These payments will in no way reduce the money available to the Class.**

#### **12. WHAT CLAIMS WILL BE RELEASED UNDER THE SETTLEMENT?**

If approved by the Court, the proposed Settlement will be legally binding upon all Class Members who did not timely request exclusion from the Class. The Settlement will release all known and unknown claims for damages and other relief as to any Class Member for acts in connection with Fairbanks' servicing practices, as set forth in the Settlement Agreement. The Settlement will release and discharge Fairbanks; related persons and entities; the owners of the loans; persons and companies that assisted Fairbanks or were hired by Fairbanks in connection with servicing the loans; and certain others. The release also will include claims related to the benefits given under the Reverse or Reimburse Program, and claims that are alleged in the National Class Case. The release will not affect your ability to defend against a pending or future individual foreclosure action, and, even if you participate in the Settlement, you will retain all rights you have today to defend yourself and your home from an improper foreclosure. The release also does not affect any claims you may have relating to the origination of your mortgage loan and unrelated to Fairbanks' servicing of the loan.

If you or someone acting on your behalf are currently litigating similar claims against Fairbanks, either individually or as part of a Class, you may be barred from pursuing such claims if you do not timely exclude yourself from the Class. You should consult with an attorney concerning your rights.

#### **13. WHAT IF THE SETTLEMENT IS NOT APPROVED BY THE COURT?**

If the proposed Settlement is not approved by the Court as being fair, reasonable, and adequate, the Settlement Agreement will be null and void and Plaintiffs will proceed with their lawsuits. In that event, your rights will not be affected in any way, and no refunds will be issued. The FTC Order will also be nullified, and the FTC may proceed in its investigation. Fairbanks, the FTC and the Plaintiffs could also attempt to enter into another Settlement.

#### **14. WHERE DO I GET ADDITIONAL INFORMATION?**

This Notice is only a summary of the proposed Settlement and does not describe all of the details of the FTC Order or of the Settlement Agreement. Accordingly, Class Members are referred to the FTC Order and the Settlement Agreement and the other documents filed with the Court in the FTC Case and the National Class Case, all of which are available for inspection at the Civil Clerk's Office, United States District Court for the District of Massachusetts, John Joseph Moakley U.S. Courthouse, One Courthouse Way, Boston, MA 02210. The Settlement is also available on the FTC website at [www.ftc.gov/fairbanks](http://www.ftc.gov/fairbanks).

#### **15. WHAT ARE THE RELEVANT DATES?**

If you wish to participate in the proposed Settlement, please fill out and return the enclosed claim form as soon as possible. It must be postmarked no later than April 24, 2004. You will receive further notification (probably within the next eight months) if the proposed Settlement is approved and the Redress Fund is to be distributed. If you wish to request exclusion from the Class or appear at the Fairness Hearing, these are the relevant dates:

- **Deadline for mailing request for exclusion (postmarked by): April 9, 2004**
- **Deadline for filing a claim (postmarked by): April 24, 2004**
- **Deadline for filing and serving notice of appearance or objection (received by the court by): April 9, 2004**
- **Date of Fairness Hearing: May 12, 2004**

**PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR FAIRBANKS FOR INFORMATION.** This Notice provides only a summary of matters about these lawsuits. You may seek the advice and guidance of your own private attorney, at your own expense, if you wish. You may also contact Plaintiffs' Co-Lead Counsel at the address listed in Section 8 of this Notice.

BY ORDER OF THE COURT

The Honorable Douglas P. Woodlock  
United States District Judge  
Boston, Massachusetts

Dated: December 10, 2003